

Condoms for sex work: Protection or evidence?

The goals of public health departments don't always coincide with those of police departments, a situation health advocates for sex workers have been concerned about for some time.

"On the one hand, you have public health, which is handing out condoms to sex workers, and on the other hand, you have police confiscating them," says Sandra Ka Hon Chu, codirector of research and advocacy at the Canadian HIV/AIDS Legal Network. "It's just cancelling out the benefits of condom distribution, which is absolutely essential for sex workers health."

Confiscating multiple condoms from an individual as evidence of prostitution appears to be a fairly common and widespread practice. According to *Criminalizing Condoms*, a report by Open Society Foundations, sex workers are put at increased risk of acquiring HIV and other diseases because of this practice in many countries, including Kenya, Russia, South Africa and the United States.

"It does happen in Canada, unfortunately, though it is not a formal policy of any police department," says Chu. "At best, it's used to harass sex workers and, at worst, it is sometimes used as a pretext for arrest."

In the US, the practice has come under attack by public health advocates. Lawyers in several cities have already said they will no longer use condoms as evidence of prostitution. New York City is considering a law that would make it the first jurisdiction to prohibit the practice.

The biggest obstacle to the law being passed appears to be objections from prosecutors of sex trafficking cases. Misdemeanor prostitution cases — arrests made on the street — rarely go to trial. But some prosecutors believe the presence of large quantities of condoms in establishments suspected of sex trafficking, where coercion comes into play, should still be permitted to serve as evidence at trial.

"Our response to that, which is the



Confiscating condoms from sex workers puts them at increased risk of sexually transmitted infections such as HIV, say public health advocates.

response of most antitrafficking groups, is, well, those are the most vulnerable people, and they need condoms more than anybody else," says Megan McLemore, senior researcher in the Health and Human Rights Division of Human Rights Watch. "You don't want to give a disincentive to have condoms available."

McLemore is the author of the report *Sex Workers at Risk*, which explores the consequences of using condoms as evidence of prostitution in New York, Los Angeles, San Francisco and Washington, DC. Nearly 200 sex workers were interviewed for the report, some confessing to having unprotected sex out of fear of being arrested for carrying condoms.

"Law enforcement efforts should not interfere with the right of anyone,

including sex workers, to protect their health," states the report. "The value of condoms for HIV and disease protection far outweighs any utility in enforcement of anti-prostitution laws."

Similar stories were expressed by Canadian sex workers in a report by Prostitutes of Ottawa/Gatineau Work, Educate and Resist (POWER). "If you have condoms on you, they [police officers] try to have you incriminate yourself," stated a sex worker named Marci. Another sex worker named Adrienne said that police officers "want the condoms. That's what they are looking for on you. If they find some, I get busted."

Canadian police officers in some areas also appear to consider confiscating condoms in locations suspected of

housing sex workers to be an acceptable practice. “What we have heard, anecdotally, is that condoms are being used as evidence of sex work indoors, in places like massage parlours,” says Kate Shannon, director of the Gender and Health Initiative at the British Columbia Centre for Excellence in HIV/AIDS. “Indoors can certainly be safer than outdoors for sex workers. Having access to condoms indoors is important.”

Confiscating condoms is never an official police practice, however, and some departments don’t seem to recognize it occurs. When contacted by *CMAJ*, the media departments of the Ottawa Police Service, the Calgary Police Service and the Vancouver Police Department said they had either not heard of the practice or that they focus on arresting buyers of sex rather than sellers.

Even though condom confiscation appears to be an informal, street-level

phenomenon, police departments should do more to deter the practice, says McLemore.

“They are not thinking about this in terms of public health,” she says. “Police departments need to increase training on HIV prevention for beat cops and explain to them why condom possession is important and why they shouldn’t interfere with that.” — Roger Collier, *CMAJ*

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